



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

*271 Cadman Plaza East
Brooklyn, New York 11201*

September 30, 2020

By ECF

Honorable Margo K. Brodie
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Fed. Defenders of New York, Inc. v. Fed. Bureau of Prisons, et al.*
Civil Docket No. 19-cv-660 (Brodie, J.)(Gold, M.J.)

Dear Judge Brodie:

This Office represents Defendants Federal Bureau of Prisons (“BOP”) and the Warden of the Metropolitan Detention Center (“MDC”) in the above-referenced matter. We write pursuant to the Court’s September 18, 2020 order requiring Defendants to provide a status report ahead of the October 2, 2020 conference in this matter addressing legal access for individuals housed at the MDC and the Metropolitan Correctional Center in New York, New York (“MCC”).

A. The Various Forms of Legal Access Provided by the Institutions

At present, both institutions have resumed in-person visitation. In addition, MDC and MCC continue to offer legal access by telephone and video-teleconference (VTC) every weekday, during the morning, afternoon, and evening alongside in-person visitation.¹ These telephone calls and VTCs are intended only for those attorneys who are unable to visit their clients in person because they have extenuating circumstances that prevent them from visiting.

Defendants are working to increase MDC and MCC’s capacity to conduct remote court appearances. To this end, Plaintiff has agreed to allow the court to use some of the timeslots currently designated for legal calls. Defendants will discuss the logistics of this increased court-call capacity with Plaintiff and the mediator.

¹ Plaintiff has reported an overflow of call requests at the MDC. Defendants have asked Plaintiff to provide more details as to why there is any overflow, as there has been a significant reduction in legal call requests over the past week. Specifically, there were only 47 requests submitted for Wednesday, September 29 and 35 requests for Thursday, September 30 for legal calls and VTCs at MDC. Prior to re-opening, there were typically over 80 requests (on average) per day, and at times as many as 150 requests per day.

B. In-Person Legal Visitation

Last week, MDC facilitated approximately six in-person visits per day (with only one in-person visit taking place on Wednesday, September 23). Around this time last year, there were approximately 22 in-person visits each day at the MDC, so Defendants anticipate in-person visiting will continue to increase in the coming weeks. Defendants have solicited voluntary feedback from the defense bar regarding their in-person visits; the feedback shows that counsel overwhelmingly have found the in-person visitation process to be accessible, efficient, and comfortable.

In light of the increasing number of attorneys visiting their clients at MDC, we want to detail the significant precautions that MDC has taken to mitigate any risk to in-person visiting. Defendants have initiated a visit-by-appointment system to ensure adequate social distancing for each visit. MDC staff screen all attorneys upon arrival by asking questions about potential COVID exposure and administering a temperature check. If a visitor has a temperature of 100.3 degrees or higher, or responds to the questionnaire in a manner that indicates a risk of exposure to COVID, the visitor is not permitted into the institution. The East and West visiting rooms have been reconfigured with hand sanitizer and plexiglass dividers between attorney and client. The individual rooms used for attorney and client visits are cleaned between visits.

The parties and the mediation team have also discussed MDC's HVAC system, to provide assurance that the HVAC system is adequate. In sum, MDC's HVAC system exceeds CDC guidance regarding its level of air filtration. Each of the West and East visiting rooms are serviced by an HVAC vent and fan system that is exclusive to that area, meaning the air in the system servicing the visiting rooms does not circulate elsewhere in the facility. On intake, the air is double-filtered, the second time by a HEPA MERV-rated 15 filter (CDC guidance recommends at least HEPA MERV-rated 13 filter).² Further, while the air in the isolated HVAC systems is always at least 20% fresh air, MDC has the capability to circulate 100% fresh air. MDC has also provided the results of an air exchange test conducted last month in the West visiting room, where the majority of visits take place. Specifically, MDC facility staff conducted a Cubic Feet Per Minute (CFM) air exchange test using a Extech CFM/CMM Thermo-Anemometer, which resulted in a CFM reading of 23. According to MDC facility staff, this means that the air is exchanged 15.68 times per hour. Defendants will continue to discuss HVAC concerns with Plaintiff and the mediator, but are hopeful that the information confirming that MDC's HVAC filtering system exceeds CDC guidelines, along with the CFM data, will provide sufficient reassurance to those visiting.

MCC has also been facilitating in-person attorney visits using similar protocols, although MCC has been utilizing an on-line scheduling system. To date, the demand for in-person visits has been relatively low, generally six or fewer visits per day. MCC also provided HVAC-related information to Plaintiff in writing and through a conference call with MCC facilities personnel.

² See <https://www.cdc.gov/coronavirus/2019-ncov/community/office-buildings.html>, citing https://www.ashrae.org/file%20library/about/position%20documents/pd_infectiousaerosols_2020.pdf at p. 10.

Defendants believe the mediation process continues to be helpful and we thank the court for its consideration of this matter.

Respectfully submitted,

SETH D. DUCHARME
Acting United States Attorney

By: /s/
Seth D. Eichenholtz
Sean P. Greene-Delgado
Matthew J. Modafferi
Assistant U.S. Attorneys
718-254-7036/6484/6229
seth.eichenholtz@usdoj.gov
sean.greene@usdoj.gov
matthew.modafferi@usdoj.gov

cc: Counsel of Record (By ECF)

Loretta E. Lynch
Roberto Finzi
Edward Nasser
Paul, Weiss, Rifkind, Wharton & Garrison LLP

Jeffrey Oestericher
David Jones
Assistant U.S. Attorneys
U.S. Attorney's Office, S.D.N.Y.